

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**LAWANDA FOUREZ, individually,  
and as administrator of the estate  
of Frank Fourez, deceased,**

**Plaintiff,**

**v.**

**UNITED STATES OF AMERICA, et al.,**

**Defendant.**

**No. 09-19-DRH**

**ORDER**

**HERNDON, Chief Judge:**

On September 29, 2008, Plaintiff Lawanda Fourez filed a three-count medical malpractice complaint against Christopher Greater Area Rural Health Planning Corporation, Zeigler Community Health and Dental Center, Dr. Clint Connor, Marion Hospital Corp., Heartland Regional Medical Center, and Southern Illinois Hospital Services, d/b/a Herrin Hospital (Doc. 2, Ex. 2). On January 8, 2009, Defendant United States of America removed the case because two of the named Defendants, Christopher Greater Area Rural Health Planning Corp., d/b/a Zeigler Community Health and Dental Center, and Dr. Clint Connor were federal employees and Plaintiff's exclusive remedy would be against the United States pursuant to the Federal Tort Claims Act. **28 U.S.C. § 2679(d)(2)**; (Doc. 2). Accordingly, the United States moved to substitute the parties and the Court granted the motion, substituting the United States for Christopher Greater Area Rural Health Planning Corp. and Dr. Clint Connor. (Doc. 8).

On February 26, 2009, Defendant United States filed a motion to dismiss, or in the alternative for summary judgment, arguing that Plaintiff's claims should be dismissed because she has failed to allege exhaustion of administrative remedies, a prerequisite under the Federal Tort Claims Act (FTCA), and that an administrative claim is still pending with the Department of Health and Human Services. (Doc. 9, Ex. A). Defendant filed this motion to dismiss pursuant to **FEDERAL RULE OF CIVIL PROCEDURE 12(b)(1) or 12(b)(6)**, or in the alternative, for summary judgment. Plaintiff filed a response conceding that a final determination has not been made by the agency in Plaintiff's administrative claim and that Plaintiff's current case should be dismissed without prejudice until the agency makes a final determination. (Doc. 12). Plaintiff further stated that this matter had been voluntarily dismissed while it was pending in state court and before it was removed. (*Id.*).

Before addressing Defendant's motion, the Court must first *sua sponte* raise the issue of whether it has subject matter jurisdiction over the case. "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." ***Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 94 (1998) (quoting *Ex parte McCardle*, 7 Wall. 506, 514 19 L. Ed. 264 (1868))**. In fact, federal courts are "obliged to police the constitutional and statutory limitations on their jurisdiction" and should raise

and consider jurisdictional issues regardless of whether the matter is ever addressed by the parties to the suit. **See Kreuger v. Cartwright, 996 F.2d 928, 930-31 (7th Cir. 1993) (citing Kanzelberger v. Kanzelberger, 782 F.2d 774, 777 (7th Cir. 1986))**. Further, the United States Constitution limits the jurisdiction of the federal courts to “cases” and “controversies.” **U.S. Const., Art. III, § 2**. Here, Plaintiff argues that this matter was already voluntarily dismissed in state court. A check with the Circuit Clerk in Williamson County, Illinois reveals that Plaintiff’s case in state court was dismissed on December 23, 2008. Defendant did not remove this case until January 8, 2009. Therefore, at the time Defendant filed their notice of removal, there was not a case or controversy pending and thus nothing to remove. Accordingly, the Court **DISMISSES without prejudice** Plaintiff’s claim for lack of jurisdiction. Furthermore, the Court **DENIES as moot** Defendant’s motion to dismiss or in the alternative for summary judgment (Doc. 9).

**IT IS SO ORDERED.**

Signed this 29th day of April, 2009.

/s/ David R. Herndon

**Chief Judge  
United States District Court**